The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STONCOR GROUP, INC., Plaintiff, v. CHRISTOPHER CAMPTON, an individual, and HI-TECH INTERIORS, INC., Defendants.	No. CV05-1225 DEFENDANT'S SECOND MOTION TO COMPEL DISCOVERY **NOTE FOR HEARING: Friday, January 6, 2006**

Defendant Christopher Campton ("Defendant" or "Campton") submits this motion to compel the plaintiff to fully disclose the plaintiff's alleged trade secrets; and critical information and documents supporting the plaintiff's alleged damages.

I. SUMMARY

The plaintiff filed this lawsuit seeking substantial damages based upon violations of trade secrets laws. Even though four months have passed since this lawsuit was filed and defendants' discovery was served, plaintiff has failed or refused to answer the following questions:

(a) describe its alleged trade secrets with any particularity;

(b) produce vital documents containing the physical representation of any such trade secrets;

(c) produce a copy of the "p-file" as it existed when Mr. Campton left;

Davis Wright Tremaine LLP
LAW OFFICES
777 – 108TH Avenue NE · Suite 2300
Bellevue, Washington 98004-5149
(425) 646-6100 · Fax: (425) 646-6199

(d) produce the "cost book" or any materials cost information;

(e) failed to produce its "pricing strategies or policies";

(f) failed to identify former managers; and

(g) failed to produce certain Costco revenues.

II. FACTS

Defendant's motion is based upon the Declarations of Counsel in Support of the Second Motion to Compel, and accompanying exhibits[1]. Note: Defendant incorporates by reference herein, but does not repeat, the facts set forth in the Motion to Compel. (*See* docket #69).

A. Discovery Requests Unanswered or Partially Answered by Plaintiff.

Following are discovery answers that remain unanswered or partially answered by the plaintiff: Defendant Campton's Amended First Discovery Requests: Interrogatories nos. 6, 7, 8, 11, 22, 24, and Request for Production nos. 2, 5(m), 5(n), 12, 14, 16, 18; and Defendant Campton's Second Discovery Requests: Interrogatory nos. 1, and Request for Production no. 4.

The requests are categorized as follows:

1. **Trade Secrets.** (*See* Campton's First Discovery, int. no. 11.)

Plaintiff has failed to identify or describe its alleged trade secrets with any particularity. In defendant's Amended First Discovery Requests to specifically identify each and every trade secret, the plaintiff responded: "[t]he trade secrets misappropriated by defendants include StonCor's installer list/network, StonCor's pricing strategy and policies, and customer lists." *See* Answers to Defendant's First Discovery Requests, no. 11. Defendant was given no information Stonhard's alleged pricing strategy and policies, and customer lists. *See also* Defendant's Motion to Dismiss under Fed. R. Civ. P. 12(c).

[1] Factual citations are directly to the exhibits to the Declaration in Support.

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2. **The "p-file" and Customer List Information.** (*See* Campton's First Discovery, RFP no. 5(m).)

The defendants have yet to see the "customer list." When defendant tried to probe the customer lists in other discovery requests, plaintiff responded that the information was secret, confidential, and then later, in a supplemental disclosure, gave a short list of customers that defendant has allegedly misappropriated, with no other information. Rick Neill testified that the customer list includes customer history information. R. Neill Dep., 167:2-8. The plaintiff has alleged that the customer list contains customer preference information, yet no such information has been disclosed in answers to written discovery and no documents have been produced. According to plaintiff, the "p-file" contains some customer information. Plaintiff accuses the defendant of misappropriating customer list information, yet it has not produced the p-file in existence when Mr. Campton left Stonahrd.

3. **Pricing Policies and Strategies.** (See Campton's First Discovery, Int. 12, 18, 22, 24; RFP no. 4)

Although defendants have tried to probe Stonhard's pricing and pricing policies for Stonhard and specifically Costco, plaintiff has not completely answered. When defendant asked for "any pricing structures, cost proposals," plaintiff responded:

> **RESPONSE**: Objection. Not likely to lead to the discovery of any admissible evidence. Further, turning over StonCor's confidential and proprietary pricing structures, proposal and bids to a known competitor who has already used such information to his own advantage will further harm plaintiff.

See Plaintiff's Response to Interrogatory no. 24.

4. The Cost Book. (*See* Campton's First Discovery, RFP no. 5(n).)

Defendant has repeatedly asked for "Stonhard's Cost Book." Plaintiff's response was:

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Bellevue, Washington 98004-5149
(425) 646-6100 · Fax: (425) 646-6199

> **RESPONSE**: . . . (m-o). Objection. Seeks confidential, proprietary and trade secret information. Production of this information to defendants who have already misappropriated or are planning to misappropriate plaintiff's confidential and trade secret information, will further harm plaintiff. Further, requests for plaintiff's Cost Book and P-Files (aka Prospect Files) are overbroad and not likely to lead to the discovery of any admissible evidence.

See Plaintiff's Response to Defendants' Requests for Production No. 5. Plaintiff has continued to refuse to produce this information. *See* Declaration in Support of Second Motion to Compel, Exhibits 36-40.

5. Identity of Managers. (*See* Campton's First Discovery, Int. no. 6-8.)

Plaintiff has also failed to produce its list of managers." *See* letter from B. Gaviria to M. Marisseau, dated July 27, 2005. The letter asked specifically for: "The identity of territory manager, field sales managers, group managers and national account managers." This information has not been produced.

6. Warranty Claims. (*See* Campton's First Discovery, RFP no. 18.)

Plaintiff has also failed to produce: "All communications related to Costco communications, including quality assurance and warranty claims." *See* letter from B. Gaviria to M. Marisseau, dated July 27, 2005.

III. ARGUMENT

A. The Court Should Order Responses to Discovery Under Fed. R. Civ. P. 37(a)(2).

The purpose of discovery is "to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute [and thus FRCP 26(b)] is liberally interpreted to permit wide-ranging discovery of information." *U.S. ex rel. Schwvartz v. TRW, Inc.*, 211 F.R.D. 388,392 (C.D. Cal. 2002). Federal courts routinely hold that parties are entitled to discover "any matter that reasonably can be

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Bellevue, Washington 98004-5149
(425) 646-6100 · Fax: (425) 646-6199

expected to lead to admissible evidence." *Hallett v. Morgan*, 287 F.3d 1193, 1212 (9th Cir. 2002) (the court abuses its discretion when its "denial of discovery results in actual and substantial prejudice").

Under FRCP 37(d), if a party fails to answer discovery, the court in which the action is pending may impose sanctions set forth in FRCP 37(b) "in regard to the failure as are just," including "(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence; (C) An order striking out pleadings or parts thereof, . . . or dismissing the action or proceedings or any part thereof, ..." In this case, defendant asks that the Court order the following:

1. Compel the plaintiff to answer all interrogatories fully and completely.

2. Compel the plaintiff to produce all documents, including but not limited to those documents related to trade secrets and damages.

3. Defendants ask that the Court enter an award of sanctions in the form of (a) attorneys' fees; and (b) exclusion of evidence or deem certain allegations of the defendants admitted for the purposes of trial.

4. Extend the discovery cutoff to enable the defendants to test the plaintiff's trade secrets and damages discovery.

Stonhard sued Campton and Hi-Tech on July 13, 2005 for untold damages arising from violations of trade secrets laws. *See* Complaint ¶ 25. Plaintiffs repeatedly accuse the defendants of stealing alleged trade secrets, and then allege that it has suffered damages. Defendants are entitled to know what they are defending. The court should enter an order compelling discovery.

Under FRCP 37(a)(4), if a motion is granted, the court shall, after opportunity for a hearing, require the party whose conduct necessitated the hearing to pay the reasonable expenses incurred in obtaining the order, including attorneys' fees. In this case, defendants ask that this Court award attorneys' fees in favor of defendants.

Davis Wright Tremaine LLP
LAW OFFICES
777 – 108TH Avenue NE · Suite 2300
Bellevue, Washington 98004-5149
(425) 646-6100 · Fax: (425) 646-6199

Respectfully submitted this 22nd day of December, 2005.

Davis Wright Tremaine LLP
Attorney for Defendant Christopher Campton

By ______________________________
Rhys R. Farren, WSBA #19398
Boris Gaviria, WSBA #31251
777 – 108th Avenue NE, Suite 2300
Bellevue, Washington 98004-5149
Telephone: (425) 646-6100
Fax: (425) 747-6199
E-mail: rhysfarren@dwt.com
E-mail: borisgaviria@dwt.com

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Medora A Marisseau**
  Medora.Marisseau@Bullivant.com Sherry.Vincent@Bullivant.com
- **Brian Keeley**
  Brian.Keeley@Bullivant.com Linda.Copeland@Bullivant.com

By ______________________________
Rhys M. Farren

Davis Wright Tremaine LLP
LAW OFFICES
777 – 108TH Avenue NE · Suite 2300
Bellevue, Washington 98004-5149
(425) 646-6100 · Fax: (425) 646-6199